IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4047 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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H G MODI & 5 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR KB PUJARA for Petitioner(s) : 1 - 6.
MR SP HASURKAR AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 05/12/2006

CAV JUDGMENT

1. This writ petition under Article 226 of the Constitution of India is preferred by the

petitioners, who were employees of the Government Engineering Colleges of State of Gujarat. At the relevant point of time, all the petitioners were in service and particulars regarding service of the petitioners are provided as per the chart annexed at Annexure-A to the petition. The petitioner Nos.1, 3 and 6 are Assistant Professor, while petitioner Nos.2 and 5 are Professors and petitioner No.4 is the Principal. In this petition, the petitioners have prayed for the following reliefs :

(a) to direct the respondents to give benefit of the increasede age of superannuation of 62 years to the petitioners – teachers of Engineering Colleges w.e.f. 31.7.1998 as directed by the Central Government and the All India Council for Technical Education (AICTE) vide communications dated 31.7.1998, 2.9.1998 and 9.10.1998 as per Annexure-B colly and to further direct the respondents to continue the petitioners

in service of their respective posts as teachers in the faculty of Engineering till they attain the age of 62 years;

OR IN THE ALTERNATIVE

(b) To direct the respondents to give benefit of the enhanced age of superannuation of 62 years to the petitioners – teachers of Engineering Colleges w.e.f. 7.9.98 as has been given to the other employees of the universities/colleges by the Government of Gujarat vide its resolution dated 7.9.98, 30.10.98 and 29.4.99 as per Annexure-C colly, and to further direct the respondents to continue the petitioners in service on their respective posts as teachers in the faculty of Engineering till they attain the age of 62 years.

1.1 The main challenge in this petition is to the action of the respondent, in issuing Government Resolution dated 26.5.1999 by which date of

superannuation of all teachers in the Department of Engineering is fixed at the age of 62 years and effect of the superannuation age of 62 years is to be given from the date of issuance of the above GR dated 26.5.1999. Thus, the petitioners who were to retire on 14.6.1999 were deprived of the above benefit accruing out of the said GR dated 26.5.1999. It is to be noted that as per the G.R. Dated 16.6.1993 of the State Government, to obviate the difficulties arising due to retirement of a teacher during current academic session, if the date of the superannuation of any teacher falls during such academic session, such an employee is allowed to be retired on the last date of the academic session, meaning thereby two dates for actual superannuation of the teachers in colleges are namely 31st October and 14th June of a given year and such dates become actual date of retirement. Since in the present case date of superannuation, on attaining age of 58 years occur in the midst of academic session beginning from 1.11.1998 to 14.6.1999, the actual date of retirement, with an extension, for all

the teachers / petitioners herein remain 14.6.1999. Thus, according to the petitioners, if the benefit of fixation of superannuation age of 62 years had been given to the petitioners, on par with other teachers of different faculties of the colleges / universities of the State of Gujarat, as decided by the Government of Gujarat w.e.f. 7.9.1998, the petitioners would have been benefited and by creating artificial cut-off line dated 26.5.1999, in the case of the petitioners the Government has acted discriminatorily, unreasonably, arbitrarily and in violation of Articles 14 and 16 of the Constitution of India. The case of the petitioners is on stronger footing according to the petitioners, since Ministry of Human Resources of Government of India by communication dated 31.7.1998, copy of which was sent to AICTE, informing the decision of Government of India that age of superannuation of the teachers of Universities and Colleges is to be increased from 60 to 62 years for all Central Institutions governed by AICTE. Apropos to that, AICTE

addressed communication dated 2.9.1998, to all Secretaries of State Governments about decision taken by the Ministry of Human Resources Department of Government of India, regarding increasing the age of superannuation of teachers from 60 to 62 years for information and necessary action. Since the petitioners are the teachers in Engineering Colleges of the State of Gujarat and governed by the decision of AICTE, an autonomous statutory body, created under All India Council for Technical Education Act,1987, they were entitled to the benefits of the above decision with immediate effect as laid down in the communication of Government of India dated 31.7.1998, where effect of the decision was to be given from 31.7.1998 only.

1.2 According to the petitioners, later on another decision was taken by the Ministry of Human Resources Development (Department of Education) of Government of India and communication was sent on 9.10.1998, informing all the Secretaries dealing with technical

education in different States and Union territories about revision of pay scales of teachers in engineering colleges and other such Institutions as per recommendations of 5th Central Pay Commission. As per the said communication, Central Government has decided to provide financial assistance to State Government on certain terms and conditions, by which expenses of revised pay scales to the extent of 80% was to be borne by Central while remaining 20% of the expenditure to be borne by the State Government. The above financial assistance was to be provided for the period from 1.1.1996 to 31.3.2000 and thereafter, entire liability of the expenses pertaining to pay scales to be borne by the State Government w.e.f. 1.4.2000. The effect of the above revised pay scale was to be given by the State Government from 1.1.1996 and from 27.7.1998, as the case may was a later date. Thus, discretion of fixing date qua pay scale was left to the State Government.

1.3 In view of the above communications so far as

the State Government of Education Department is concerned, GR dated 7.9.1998 was issued by which revision of pay scales of teachers, librarians and other personnels in University and College was given effect from 1.1.1996. That another GR dated 30.10.1998 issued by the Education Department of Government of Gujarat by which age of superannuation was fixed for teachers of University / Colleges completing the age of 58-60 years as on 7.9.1998 or subsequent to that, superannuation age was fixed at 62 years. Thus, benefits of superannuation age was given to all those teachers of Government Colleges and Universities except the petitioners who were serving in the Engineering Colleges run by the State of Gujarat and governed as per the Rules and Regulations framed by the AICTE, a technical body formed under the statutory provisions of the Act.

2. Thus, the grievance of the petitioners against the Resolution issued by the Education Department of State of Gujarat dated 26.5.1999 by

which cut-off line of granting benefit of age of superannuation to the persons like the petitioners is fixed at 62 years, but the effect of enhanced age to be given from the date of the said GR i.e. 26.5.1999. The State Government has conferred the benefits of higher and revised pay scale w.e.f. 1.1.1996 by the same GR dated 26.5.1999 on par with other teachers of the colleges and universities, even receiving financial aids from the Government, but the petitioners are deprived of benefit of superannuation by fixing the cut-off line arbitrarily i.e. 26.5.1999, though they are serving in the Government colleges.

3. Shri K.B.Pujara, learned Advocate for the petitioners, has mainly argued that pay scale and age of superannuation of the petitioners are governed by the Circulars or Resolutions issued by the Education Department of the State Government and such G.R and Circulars are normally based on the recommendations made by the AICTE, a statutory autonomous body constituted

under All India Council for Technical Education Act,1987. The above body also takes into consideration the decision taken by the Ministry of Human Resources (Department of Education) of the Government of India and thus, the service conditions of the petitioners are based on the norms as fixed by AICTE and Department of Education of State of Gujarat. Thus, according to Shri Pujara, learned advocate, issuance of letter by the Ministry of Human Resources dated 31.7.1998 and communication of the above letter addressed by AICTE to all the Secretaries of the State of Gujarat on 2.9.1998 and 9.10.1998 confer benefits of enhanced age of superannuation and revised pay scale to the petitioners and State Government cannot deprive the petitioners by fixing the cut-off date as laid down in GR dated 26.5.1999, particularly when the benefits of age of superannuation of 62 years were given by the Education Department of the State of Gujarat to other teachers and employees of the Colleges and Universities of non-Government as well as affiliated colleges, of revised pay scale w.e.f.

1.1.1996 and/or age of superannuation w.e.f. 7.9.1998. According to Shri Pujara, learned advocate, the above decision of the authority is directly against the decision of the Apex Court in case of D.S.Nakara Vs. Union of India, reported in AIR 1983 SC 130 and other decisions which followed the ratio of the above decision and, therefore, unreasonable, arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India and require to be quashed and set aside in the exercise of powers under Article 226 of the Constitution of India.

4. Shri S.P.Hasurkar, learned AGP appearing for the respondent authorities, has mainly relied on the affidavit-in-replies filed by the concerned Officers of the Education Department namely Shri R.V.Suthar, Under Secretary to the Government of Gujarat and another affidavit explaining the rational behind fixing the date of benefit of superannuation. According to him, the service conditions of the petitioners are governed as direction issued by the AICTE while the teachers

of other colleges of Government as well as affiliated to Government is by the University Grant Commission and, therefore, no equality can be claimed. It is also submitted that it was left open for the State Government to decide about the date of implementation and scales of pay as communicated by a letter dated 9.8.1998 and particularly in Clause-5 of the said communication, the above discretion was given to the State Government. He has also drawn attention to a letter dated 15.3.2000 addressed by the AICTE by which, in Para.2.2 date of effect of revised pay scale was decided as 1.1.1996 or from such later date as the concerned respective State may decide. Therefore, according to him, the effect of the superannuation age of 62 years is the date on which, GR dated 26.5.1999 was issued, which cannot be said to be arbitrary or unreasonable or discriminatory and violative of Articles 14 and 16 of the Constitution of India, particularly when after 1.4.2000, the expenses with regard to revised pay scale was to be borne by the State Government and any retrospective

effect of the above GR granting benefit to petitioners would have entailed huge financial burden and, therefore, the decision of the respondent authorities does not require any interference, by issuing mandamus to the respondents, as prayed by the petitioners in the prayer clause.

5. I have considered the submissions of learned Advocates appearing for the petitioners as well as for the respondents. On perusal of record, which includes relevant annexures and affidavit-in-replies, affidavit-in-rejoinder and also an additional affidavit filed by the respondents, it is evidently clear that service conditions of the petitioners are governed by various circulars and resolutions issued by the Department of Education, State of Gujarat. It is also to be noted that for issuing such circulars and GRs, the Department of Education, State of Gujarat take into consideration various recommendations made by All India Council for Technical Education (“AICTE” for short), which is an autonomous

statutory body constituted under All India Council for Technical Education Act,1987, based on the decision taken by the Ministry of Human Resources Development (Department of Education) of Government of India. Thus, the fortune of the petitioners moves on the axis of decision taken at the highest level namely the Ministry of Human Resources (Department of Education) of Government of India. It is to be noted that after the formation of AICTE, the recommendations regarding pay scale and age of superannuation are made by the AICTE, whose functions and duties are enshrined in Section 10 of the said Act and even AICTE also bound by direction given by Central Government from time to time under Section 20 of the Act. That prior to AICTE, service conditions of the petitioners were governed as per the recommendations of the University Grant Commissions.

5.1 Therefore, for all purposes, service tenure of the petitioners was to be regulated as per the instructions and recommendations made by AICTE

from time to time. In the above backdrop of factual and legal aspects, the Ministry of Human Resources had issued a communication on 31.7.1998 by which age of superannuation of teachers was increased from 60 to 62 years and all the concerned were informed accordingly to take necessary action and the above order was to come into force w.e.f. 31.7.1998. The AICTE had communicated the above decision of the Ministry of Human Resources of Government of India to all concerned State Governments where the impact of the said decision was to take place. It was made clear that in view of the above decision of increasing age of superannuation of teachers from 60 to 62 years, necessary action was to be taken by the concerned State Government / Union territories and other authorities.

5.2 Therefore, the above communication dated 31.7.1998 by Ministry of Human Resources, Government of India and following communications dated 2.9.1998 by the AICTE to all concerned Secretaries of the State / Union territories and

other authorities of that Union to the increase of superannuation of the teachers from 60 to 62 years, whose service conditions were governed in accordance with the AICTE recommendations and guidelines. In view of the above, the State of Gujarat, Department of Education was to carry out the above directions of enhanced age of superannuation as early as possible and as reflected, at least from the date of order i.e. 31.7.1998, as fixed by the Ministry of Human Resources, Government of India.

5.3 It is to be noted that other communications addressed by the Ministry of Human Resources Development (Department of Education), Government of India on 9.10.1998 is pertaining to revision of pay scale of teachers in Engineering Colleges and degree level technical Institutions about recommendations of 5th Central Pay Commission. It also contains scheme of revision of pay scale and providing financial assistance to the State Government, who wish to adopt and implement the scheme of revision of pay scale to the tune of

80% of an additional expenditure involving the implementation of the scheme and 20% of the rest of the expenditure to be borne by the State of Gujarat. The said assistance covered the period from 1.1.1996 to 31.3.2000 and after 1.4.2000, the expenses were to be borne by the State of Gujarat only. It is to be noted that Government of Gujarat (Department of Education), by issuing the GR dated 7.9.1998 passed a Resolution by which pay scale of teachers, librarians, physical education and personnel of universities and colleges decided to revise pay scale from 1.1.1996 to the above class of employees bringing on par with revised pay scale given to the teachers of universities and colleges as per earlier recommendations of Mehrotra Commission of Government of India. So far as another Resolution dated 30.10.1998 is concerned, it also contained revision of pay scale of teachers, librarians and other employees of physical education, Department of Government and non-Government colleges and universities it decided about fixation of age of superannuation and it was resolved to increase

the age of superannuation of teachers of universities / colleges, who are completing the age of 58/60 years as on 7.9.1998 to 62 years. Not only that, but revised pay scale was subsequently given by keeping measures for maintenance of standard in higher education for all personnels in universities and colleges in Government as well as non-Governmental colleges by issuing GR on 29.4.1999 and there also, age of superannuation of 62 years was made applicable to Registrars, Librarians, Physical Education personnels and other employees of universities, who were treated on par with the teachers and whose age of superannuation was 58/60 years. Till then, the petitioners, who were serving in the Engineering Colleges run by the State of Gujarat, were not given any benefit in spite of clear communication dated 31.7.1998 and 2.9.1998 about fixation of date of superannuation.

5.4 The benefits of revised pay scales was conferred upon the petitioners only by issuing GR dated 26.5.1999. Thus, pay scale of the

petitioners came to be revised w.e.f. 1.1.1996, making them on par with other teachers of universities / colleges as decided in GR dated 30.10.1998 issued by the Education Department of Government of Gujarat, but while granting the benefit of increased age of superannuation, it was made effective from the date of issuance of impugned GR i.e. 26.5.1999, without assigning any reasons or rational of fixing the above date as the date of superannuation. Annexure-III annexed with the aforesaid GR dated 26.5.1999, Clause-5 fixes the above age of 62 years making it effective from the date of issuance of GR.

6. It is clear from the above discussions of facts that the petitioners, before advent of AICTE, service conditions were governed by the UGC and later on by the AICTE. All recommendations and guidelines issued by AICTE were to be carried out by the Department of Education, State of Gujarat and thus, the State Government was duty bound to implement the recommendations of Ministry of Human Resources

(Department of Education) of Government of India dated 31.7.1998, as communicated by AICTE on 2.9.1998. It is admitted position, as reflected from the affidavit-in-reply that there appear to be delay of about 8 months, only because files pertaining to implementation of the recommendations as above, moved from one department to other department. Meanwhile, the benefits of revised pay scales and fixation of age of superannuation qua other employees of the Governmental as well as non-Governmental colleges and universities were already given by GR dated 30.10.1998 and 29.4.1999. Even date of superannuation of 62 years indicated in Part-1 and Part-6 of the Appendix appended to the GR dated 7.9.1998 was made applicable to all employees of the universities. There appears to be no justification or rational behind not granting the benefit of age of superannuation 62 years to the petitioners, whose services are governed by the AICTE recommendations made pursuant to the decision taken by the Ministry of Human Resources, Government of India. It is also

to be noted that the present petitioners are serving as the teachers in the colleges run by the State of Gujarat and not any financial aided private or semi Government colleges. It is also pertinent that only difference sought to be made by the learned AGP is based on recommendations of University Grant Commission and the AICTE from time to time. According to him, the benefit given to the teachers of other colleges may be Governmental or non-Governmental or even employees of the universities was as per the guidelines issued by the UGC and the present petitioners governed as per the recommendations of AICTE. Therefore, it cannot be said that they formed a homogeneous group, which require equal treatment at the hand of the State Government. According to him, it was left open for the State Government to decide about the date of implementation of revised pay scales and service conditions as per the communication issued by the AICTE on 15.3.2002 as communicated by the letter dated 15.3.2000. He has submitted that the revised pay scales was to be made effective from

1.1.1996 or from such later date as may be decided by the State Government or union territories and, therefore, no discriminatory treatment is meted out to the present petitioners. He has submitted that in view of the decision reported in AIR 1992 SC 767 since there is huge financial burden, it is open for the State Government to fix a particular date as the date of superannuation, does not appeal to this Court, since the above decision was pertaining to introduction of an entirely new scheme by the employer, where it had no connection with the existing scheme and different considerations entered in the decision making process and, therefore, considering the financial impact the Apex Court upheld, the date of fixation of pensionary benefit for the employees working in the Government aided private primary school. In the present case, so far as the petitioners are concerned, they were getting benefit of equal treatment with regard to revised pay scales and other service conditions from time to time on par with employees of all the Governmental as

well as non-Governmental colleges and universities, as issued by the Department of Education, State of Gujarat. Not only that, but in the instant case, even revision of pay scales were also given to the petitioners and other employees w.e.f. 1.1.1996 by GR dated 26.5.1999, the only discrimination meted out is of granting benefit of age of superannuation i.e. 62 years. It is profitable to note that similar issue arose in the case of D.S.Nakara Vs. Union of India, reported in AIR 1983 SC 130 and Court has observed as under in Para.15, 16 and 32 :

> “The fundamental principle is that Art. 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differential which distinguishes persons or things that are grouped together from those that are left out of the group and that deferentia must have a rational nexus to the object sought to be achieved by the statute in question. The doctrine of classification was evolved to sustain a legislation or State action designed to

help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved. Where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that cannot be done when they are in service, can that be done during their retirement? Expanding this principle, it can confidently be said that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later."

6.1 That even the Apex Court in the reported

decision in the case of V.Kasturi v. Managing Director, State Bank of India, Bombay & Anr., AIR 1999 SC 81, in Para.21, has held as under :

> “21. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara's case

(AIR 1983 SC 130) (supra) would cover this category of cases."

Thus, the Apex Court has laid down the law to the extent that if an employee is entitled to have the benefits conferred upon the other similarly situated persons, such an employee cannot be deprived the benefits on the ground of giving effect of such benefit from a particular date. In the present case, it is an admitted position that the petitioners are entitled to have benefit of enhanced superannuation age and effect of which is given by the Government Resolution dated 26.5.1999 is on the ground that some delay has taken place of about 8 months in processing the file of the subject by various departments of the State of Gujarat. Therefore, petitioners, otherwise entitled for the benefit of enhanced superannuation age on part with teachers of the Arts, Commerce and Science colleges run by grant-in-aid colleges and even the employees of the universities of the State of Gujarat, who have been conferred the benefits of superannuation age of 62 years by GR dated

7.9.1998 and 30.10.1998, the petitioners are equally entitled for the above benefits and by not conferring such benefits to the petitioners, the respondents have acted unreasonably and arbitrarily in violation of Article 14 of the Constitution of India and, therefore, it requires to be set right by this Court in exercise of power under Article 226 of the Constitution of India.

6.2 It is also to be noted that there are only six persons like the petitioners who were to get benefit of the decision of the Government, if fixation of age of superannuation of 62 years was given w.e.f. 7.9.1998, as given to other employees by the Resolution supra.

6.3 Therefore, in the present case, submissions of learned AGP about grant of discretion to the State Government about fixation of particular date by the communication of AICTE dated 15.3.2000 is concerned, the same is about revision of pay scale like communication dated

9.10.1998 and not about the fixation of age of superannuation. It was also made clear by the AICTE in its earlier communication dated 9.10.1998, where the decision taken by the Ministry of Human Resources, Government of India on 31.7.1998 about enhanced age of superannuation for the teachers from 60 to 62 years was already communicated for necessary action. If any delay is taken in getting sanction of various departments of the State Government which is delayed by 8 months, nothing prevented the State of Gujarat from giving effect of the said decision with retrospectivity or at least from the date when the same is given to similarly situated persons by GR dated 7.9.1998, 30.10.1998 and 29.4.1999.

6.4 In the circumstances, it is held that effect of fixation of the age of superannuation of the petitioners, of 26.5.1999 i.e. the date of issuance of the GR is unreasonable, arbitrary, discriminatory and has no nexus with the object sought to be achieved and, therefore, violative

of Articles 14 and 16 of the Constitution of India, which is required to be quashed and set aside in exercised of powers under Article 226 of the Constitution of India and the same is quashed and set aside.

6.5 In view of the above discussion and findings, it is held that the decision of the respondent authorities only to the extent of giving effect of fixation of the age of superannuation from 58 to 62 years vide GR dated 26.5.1999 issued by Department of Health, State of Gujarat, as reflected in Clause-V of Annexure-III attached to the above GR, is hereby quashed and set aside and rest of the contents of the notification including enhanced age of superannuation of 62 years remain as they are. It is hereby further held that petitioners are entitled to have the benefits of enhanced age of superannuation from 58 to 62 years on par with other teachers of the colleges of the Government and the staff of universities as per GR dated 7.9.1998 and 30.10.1998. However, it is made clear that since

the petitioners have already been superannuated by attaining the age of 58 years, the period from 58 years to 62 years shall have to be considered for the purpose of continuing of services and other retiral benefits and notional for the payment of salary.

6.6 The effect of this order be given to the petitioners within 8 weeks from date of receipt of the order passed by this Court.

7. Rule is made absolute accordingly to the above extent, with no order as to costs.

8. At this stage, Shri K.B.Pujara, the learned counsel appearing for the petitioner, submits that in view of oral order dated 14.6.1999 passed by the learned Single Judge and specifically observation made in Para.3 about petitioners succeeding in the petition finally, the petitioners shall be deemed to be in service from the date of filing of the petition and thereby, all available benefits shall be payable to the

petitioners. Therefore, it is necessary that the Court should pass an order with regard to payment of salary of the petitioners for the period of date of superannuation on the basis of completion of 58 years and fixation of age of superannuation at 62 years on the basis of pronouncement by this Court, having set aside fixation of cut-off line vide GR dated 26.5.1999.

8.1 The above submissions are opposed by learned counsel appearing for the State on the ground that since petitioners have already been superannuated and have not worked for the said period on the basis of principle of 'no work not pay', no order can be passed directing respondents to pay salary for such period. Besides, Assistant Government Pleader has submitted that interim order, if any, passed in the proceedings of writ petition is always subject to the final order that may be passed.

9. Considering the above submissions, I am not inclined to accept the prayer made by Shri

Pujara, the learned counsel appearing for the petitioners on the ground that the petitioners are already superannuated and they cannot be paid idle salary for the period for which they have not worked at all. Thus, observations of learned Single Judge in Para.3 of the interim order cannot be given effect so as to grant payment of salary as requested for.

(Anant S. Dave,J.)

(vipul)